

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DOCKET NO: 04-11933-NMG

SPINIELLO COMPANIES,
Plaintiff,

v.

BRICO INDUSTRIES, INC.
Defendant.

**DEFENDANT BRICO
INDUSTRIES, INC.'S MOTION
FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, the defendant, Brico Industries, Inc. ("Brico"), hereby moves for summary judgment as to all counts of the plaintiff's Complaint. As grounds for this Motion, Brico states that there is no genuine issue of material fact, and that it is entitled to judgment as a matter of law. Summary judgment is appropriate for the following reasons: (1) there was no contract between plaintiff and Brico; (2) plaintiff's claims for breach of warranty fail in the absence of privity of contract, and where Brico provided goods pursuant to specifications; (3) plaintiff's claim for negligent misrepresentation is barred by the statute of limitations, and otherwise should be dismissed as plaintiff fails to proffer sufficient evidence that defendant made a misrepresentation; (4) plaintiff's claim for negligent design is barred by both the statute of limitations and the economic loss doctrine; and (5) there is no evidence that Brico acted unfairly and deceptively in violation of M.G.L. Chapter 93A.

In further support of the within motion, Brico submits the accompanying Affidavit of Counsel, Affidavit of Robert J. Card, P.E., Memorandum of Law, and its statement pursuant to Local Rule 56.1.

WHEREFORE, the defendant, Brico Industries, Inc., respectfully requests that this Court ALLOW its Motion for Summary Judgment and DISMISS with prejudice all Counts of the plaintiff's Complaint, as well as enter any other relief deemed meet and proper.

REQUEST FOR A HEARING

Defendant Brico Industries, Inc. requests a hearing.

Respectfully Submitted,
Defendant,
BRICO INDUSTRIES, INC.,
By its attorneys,

/s/ Thomas C. Federico

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LOCAL RULE 7.1(A)(2) CERTIFICATION

I, Thomas C. Federico, Esquire, counsel for the defendant, hereby certify that pursuant to Local Rule 7.1(A)(2) counsel from my office conferred with plaintiff's counsel, Attorney Jeremy Blackowicz, on 5 October 2006 by telephone. Despite an attempt in good faith to resolve the issue presented by the within Motion, we were unable to do so.

/s/ Thomas C. Federico

Thomas C. Federico

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on 5 October 2006.

/s/ Thomas C. Federico

Thomas C. Federico, BBO #160830